

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2104

Introduced by Assembly Member Hayashi

February 18, 2010

An act to amend Section 4003 of, and to add ~~Sections 4008.1 and 4008.2~~ *Section 4008.1* to, the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2104, as amended, Hayashi. California State Board of Pharmacy.

Existing law, the Pharmacy Law, provides for the licensure and regulation of the practice of pharmacy by the California State Board of Pharmacy within the Department of Consumer Affairs. Under existing law, the board is comprised of 13 members and the Governor appoints 11 of those members and one member each is appointed by the Senate Committee on Rules and the Speaker of the Assembly. Existing law authorizes the board to appoint a person exempt from civil service designated as the executive officer who performs the duties delegated by the board. Under existing law, the executive officer may or may not be a member of the board, as determined by the board. Existing law prohibits any board from submitting to the Legislature any fiscal impact analysis relating to legislation pending before the Legislature until the analysis has been submitted to the Director of Consumer Affairs for review and comment.

This bill would instead authorize the Governor to appoint the executive officer and would authorize the Governor to determine

whether the executive officer may or may not be a member of the board. The bill would require the board to submit to the Department of Consumer Affairs and receive prior approval for every piece of state legislation the board seeks to sponsor, support, or oppose and would require that same submittal and approval process after subsequent substantive amendments to legislation. ~~The bill would also require a board member, acting in his or her official capacity, who engages in an ex parte communication with a person with an interest, as defined, in a matter before the board to disclose that communication in a specified manner. The bill would require the board to promulgate regulations providing requirements for reporting ex parte communications and sanctions for noncompliance.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4003 of the Business and Professions
- 2 Code is amended to read:
- 3 4003. (a) The Governor may appoint a person exempt from
- 4 civil service who shall be designated as an executive officer and
- 5 who shall exercise the powers and perform the duties delegated
- 6 by the board and vested in him or her by this chapter. The executive
- 7 officer may or may not be a member of the board as the Governor
- 8 may determine.
- 9 (b) The executive officer shall receive the compensation as
- 10 established by the board with the approval of the Director of
- 11 Finance. The executive officer shall also be entitled to travel and
- 12 other expenses necessary in the performance of his or her duties.
- 13 (c) The executive officer shall maintain and update in a timely
- 14 fashion records containing the names, titles, qualifications, and
- 15 places of business of all persons subject to this chapter.
- 16 (d) The executive officer shall give receipts for all money
- 17 received by him or her and pay it to the Department of Consumer
- 18 Affairs, taking its receipt therefor. Besides the duties required by
- 19 this chapter, the executive officer shall perform other duties
- 20 pertaining to the office as may be required of him or her by the
- 21 board.
- 22 (e) In accordance with Sections 101.1 and 473.1, this section
- 23 shall remain in effect only until January 1, 2013, and as of that

1 date is repealed, unless a later enacted statute, that is enacted before
2 January 1, 2013, deletes or extends that date.

3 SEC. 2. Section 4008.1 is added to the Business and Professions
4 Code, to read:

5 4008.1. The board shall submit to the department and receive
6 prior approval for every piece of state legislation the board seeks
7 to sponsor, support, or oppose. The board shall resubmit and
8 receive subsequent approval from the department on the same
9 legislation after any substantive amendments.

10 SEC. 3. ~~Section 4008.2 is added to the Business and Professions~~
11 ~~Code, to read:~~

12 ~~4008.2. (a) A board member who is acting in his or her official~~
13 ~~capacity who engages in an ex parte communication with a person~~
14 ~~with an interest in a matter before the board shall disclose that~~
15 ~~communication in one of the following ways:~~

16 ~~(1) The board member or the person discloses the~~
17 ~~communication pursuant to this section and makes public the ex~~
18 ~~parte communication by providing a full report of the~~
19 ~~communication to the executive officer or, if the communication~~
20 ~~occurs within seven days of the next board meeting or hearing, to~~
21 ~~the board on the record of the proceeding of that meeting or~~
22 ~~hearing.~~

23 ~~(2) When two or more board members receive substantially the~~
24 ~~same written communication or receive the same oral~~
25 ~~communication from the same party on the same matter, one of~~
26 ~~the board members fully discloses the communication on behalf~~
27 ~~of the other board member or members who received the~~
28 ~~communication and requests in writing that it be placed in the~~
29 ~~board's official record of the proceeding.~~

30 ~~(3) The executive officer shall place in the public record any~~
31 ~~report of an ex parte communication.~~

32 ~~(4) Communications shall cease to be ex parte communications~~
33 ~~when fully disclosed and placed in the board's minutes pursuant~~
34 ~~to this section.~~

35 ~~(b) For purposes of this section, "ex parte communication"~~
36 ~~means any oral or written communication between a board member~~
37 ~~and a person with an interest in a matter before the board,~~
38 ~~concerning substantive but not procedural issues, that does not~~
39 ~~occur in a public hearing, workshop, or other public proceeding,~~

1 or on the official record of the proceeding on the matter and falls
2 into one of the following categories:

3 (1) ~~The communication occurs in a meeting or other conference,~~
4 ~~including telephone calls, that begins at a scheduled time.~~

5 (2) ~~The communication is in writing, including electronic mail~~
6 ~~or text messages.~~

7 (3) ~~The communication occurs on calendar days when the board~~
8 ~~has a scheduled meeting or hearing.~~

9 (4) ~~The communication qualifies as an additional ex parte~~
10 ~~communication, as may be defined by the board by regulation.~~

11 (5) ~~The communication is by or from any agent, officer, or~~
12 ~~employee of a licensee or any agent, officer, or employee of any~~
13 ~~civic, environmental, neighborhood, business, consumer, labor,~~
14 ~~trade, or similar organization.~~

15 (e) ~~“Person with an interest,” for purposes of this section, means~~
16 ~~any of the following:~~

17 (1) ~~Any agent, officer, or employee of a licensee, or a person~~
18 ~~receiving consideration for representing the licensee, or a~~
19 ~~participant in the proceeding on any matter before the board who~~
20 ~~intends to influence the decision of a board member on a matter~~
21 ~~before the board.~~

22 (2) ~~Any agent, officer, or employee of any civic, environmental,~~
23 ~~neighborhood, business, consumer, labor, trade, or similar~~
24 ~~organization who intends to influence the decision of a board~~
25 ~~member on a matter before the board.~~

26 (3) ~~Any person with a financial interest, as described in Article~~
27 ~~1 (commencing with Section 87100) of Chapter 7 of Title 9 of the~~
28 ~~Government Code, in a matter before the board, or an agent, officer,~~
29 ~~or employee of the person with a financial interest, or a person~~
30 ~~receiving consideration for representing the person with a financial~~
31 ~~interest who intends to influence the decision of a board member~~
32 ~~on a matter before the board.~~

33 (4) ~~A consumer or licensee representing himself or herself who~~
34 ~~intends to influence the decision of a board member on a matter~~
35 ~~before the board.~~

36 (d) ~~The board shall promulgate regulations providing~~
37 ~~requirements for reporting of ex parte communications and~~
38 ~~appropriate sanctions for noncompliance with any rule proscribing~~
39 ~~ex parte communications. The regulation shall provide that~~
40 ~~reportable communications shall be reported by the board member~~

1 ~~or person with an interest before the board, whether the~~
2 ~~communication was initiated by the person or the board member,~~
3 ~~and that the report shall include all of the following information:~~

4 ~~(1) The date, time, and location of the communication, and~~
5 ~~whether it was oral, written, or a combination.~~

6 ~~(2) The identity of the recipient and the person initiating the~~
7 ~~communication, as well as the identity of any persons present~~
8 ~~during the communication.~~

9 ~~(3) A brief description of the interested person's, but not the~~
10 ~~board member's, communication and its content, to which shall~~
11 ~~be attached a copy of any written material or text used during the~~
12 ~~communication.~~

13 ~~(e) Nothing in this section shall be construed to affect the~~
14 ~~requirements of Sections 11425.10 and 11430.10 of the~~
15 ~~Government Code regarding quasi-adjudicatory proceedings.~~